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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,173	03/27/2006	Manfred Herbst	2002p17478WOUS	6185
7590 07/02/2009				
Siemens Corporation Intellectual Property Department 170 Wood Avenue South Iselin, NJ 08830			EXAMINER WHITE, DWAYNE J	
			ART UNIT 3745	PAPER NUMBER
			MAIL DATE 07/02/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/532,173

**Applicant(s)**

HERBST, MANFRED

**Examiner**

DWAYNE J. WHITE

**Art Unit**

3745

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 11, 12 and 15-30.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☒ Other: See Continuation Sheet

/Edward K. Look/  
Supervisory Patent Examiner, Art Unit 3745

Continuation of 13. Other: In regards to Applicant's initial argument that the Examiner cannot conclude that the claimed shapes of the recesses are not in the prior art and therefore the Examiner's position is that in absence of Applicant finding and demonstrating differences between the claimed subject matter and the prior art, that the prior art is capable of performing the limitations and thus reads on the claim, the Examiner respectfully disagrees with Applicant's characterization. The Examiner first notes Applicant's double negative statement of "cannot conclude.....the recesses are not in the prior art". Is Applicant stating that the Examiner is determining that there is no evidence that the recesses are in the prior art or that the Examiner is determining that the recesses are of a shape as claimed claimed? The Examiner stated in the previous response that that the prior art does disclose hemispherical recesses in both the response to arguments and the rejection. It is unclear where Applicant is going with this particular argument. What the Examiner has stated is that the additional limitation of "alternating flow eddies form in the recess that assists with continued laminar flow of the air while also reducing flow resistance along the surface relative to flow in the absence of the recess" is clearly a function of the hemispherical recesses. Since the prior art discloses these recesses, as indication in both the rejections and the response to arguments, the alternating flow eddies must occur as claimed by Applicant. Otherwise, Applicant is either omitting structure from the claim beyond the recesses being hemispherical or the invention is inoperative. Therefore, the Examiner has concluded that the flow eddies are a function of the hemispherical recesses and thus the recesses of the prior art are inherently capable of creating such flow eddies. Furthermore, Applicant has argued that Olsen and Hickey do not disclose recesses in the shape of an hemisphere. While the Examiner agrees that Olsen does not disclose hemispherical recesses, Hickey clearly discloses said recesses as the recesses clearly has a spherical curve. The rejection made in the final office action have been maintained. The Examiner also notes that claim 22 is characterized as currently amended however there are no changes made to the claim. The Examiner has entered the claimed dated 10 June 2009 for purposes of Appeal.